No. 3832

United States

Circuit Court of Appeals

For the Ninth Circuit.

JOHN D. SPRECKELS, as Special Administrator of the Estate of JOHN D. SPRECKELS, Jr., Deceased,

Plaintiff in Error,

vs.

EDITH H. WAKEFIELD,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, Second Division.

FILED
MAR 10 1922
F. D. MONCKTON,
CLERK

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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C. W. BYRNES, Esq., and JAMES F. PECK, Esq., Crocker Building, San Francisco,
Attorneys for Plaintiff.

SAMUEL M. SHORTRIDGE, Esq., MORRISON, DUNN & BROBECK, Esqrs., Crocker Building, San Francisco, and

BERT SCHLESINGER, Esq., First National Bank Building, San Francisco,
Attorneys for Defendant.

In the District Court of the United States for the Southern District of the Northern District of California, Second Division.

(No. 16077.)

EDITH H. WAKEFIELD,

Plaintiff,

vs.

JOHN D. SPRECKELS, Jr.,

Defendant.

Complaint on Contract.

Comes now the plaintiff above named and complains of defendant above named and for cause of action alleges:

I.

That plaintiff is now and has been since on or about the first day of September, 1916, a citizen

of the State of New York and resident of the State and City of New York.

II.

That defendant has been at all the times herein mentioned and now is a citizen and resident of the State of California, and of the City and County of San Francisco, in the Northern District thereof.

III.

Plaintiff is and for more than one year last past has been the wife of Franklin W. Wakefield; that prior to her said marriage to said Franklin W. Wakefield, her name was Edith Marie Spreckels;

IV.

That on or about the 1st day of December, 1913, at the City and County of San Francisco, State of California, plaintiff and defendant made and entered into a certain agreement in writing in the words and figures as following, to wit:

"THIS AGREEMENT, made and entered into this first day of December, 1913, by and between John D. Spreckels, Jr., the [1*] party of the first part, and Edith Marie Spreckels, his wife, the party of the second part, both of the City and County of San Francisco, State of California,

WITNESSETH:

That whereas, the party of the second part is about to commence a suit for divorce against the party of the second part and has employed Mr. Joseph T. O'Connor as her counsel for that purpose, and the party of the first part has employed

*Page-number appearing at foot of page of original certified Transcript of Record.

Mr. Samuel M. Shortridge to represent him in said suit; and,

Whereas, said parties desire to avoid the expense of litigation over any and all questions as to their respective property rights, including the right of said second party to temporary and permanent alimony, and also desire to avoid any controversy over the care, custody and maintenance of the minor children of said parties; and,

Whereas, said parties being fully and independently advised by their respective counsel and each being fully informed as to his and her rights, duties and obligations growing out of their marriage relation, have come to an agreement as to each and all of said matters;

NOW, THEREFORE, in consideration of the mutual covenants each to the other running, and of other good and valuable consideration each to the other moving, have agreed and do hereby agree as follows, to wit:

1. That upon the due making and entry of an interlocutory decree of divorce in favor of the said second party the said first party will pay unto the said second party the sum of Three Hundred and Fifty ($350.00) Dollars, monthly, in advance, commencing with the date of the entry of said interlocutory decree, for the period of one year thereafter; that upon the due making and entry of a final decree of divorce in favor of the said second party, said first party will pay unto the said second party, monthly, in [2] advance, the sum of Three Hundred and

Fifty ($350.00) Dollars during the remaining period of her natural life.

2. That the said second party agrees to accept said several sums of Three Hundred and Fifty ($350.00) Dollars, monthly in advance, as and for and in full of her right or claim to temporary and permanent alimony, maintenance and support from the said first party.

3. That the said second party hereby releases, quitclaims and grants unto the said first party all her right, title and interest, past, present and future, in and to any and all community property of the said parties hereto and in and to any and all separate property of the said first party.

4. That the said parties hereto have settled and do hereby forever settle all their property rights, including the right of the said second party to alimony, support and maintenance from the said first party, and that whatever property the said first party now has, be the same community or separate property, and whatever property he may hereafter acquire shall henceforth be considered as and be his separate property, and that whatever proportion the said second party now has or may hereafter acquire shall henceforth be considered as and be her separate property.

5. That whatever deeds or written instruments shall be necessary to effectuate the ends aforesaid and to quiet title to any property now owned or hereafter to be acquired by either of said parties shall be executed by the said parties hereto, each to the other, respectively, on demand.

6. That the care and custody of the minor children of said parties be and remain with and in the said second party, their mother, and that while said children are being supported and maintained by the said second party, the said first party will [3] pay to the said second party, for the support and maintenance of said children, the sum of Three Hundred ($300.00) Dollars per month, in advance, that is to say, One Hundred ($100.00) Dollars per month for each of said children supported and maintained by said second party; that the said first party shall have the right to visit said children, and have said children visit with him, at any and all times convenient to him and them; that none of said children shall be taken out of the State of California without the previous written consent and approval of both of the said parties hereto.

7. That the said second party shall have the possession and use of the household furniture and effects now in the present home of the said parties hereto, situated at number 1232 Washington Street, in said city and county.

8. That the said second party represents and agrees that she has incurred bills amounting to the sum of $1500.00, which are all the bills incurred by said second party and remaining unpaid, and which said first party agrees to pay.

And said second party agrees to save said first party harmless from the payment of any other bills now existing or hereafter to exist by her incurring, and that if any should come up and be paid by said first party, that he may deduct the same from any

alimony to be paid to said second party under this agreement, or any decree of court.

9. That the provisions of this agreement shall not be modified or abrogated by any interlocutory decree or final decree of divorce in favor of the said second party which may be hereafter made and entered.

IN WITNESS WHEREOF, the said parties have each hereunto set his and her hand and seal, in duplicate, on this [4] the day and year first above written.

JOHN D. SPRECKELS, Jr. (Seal)
EDITH MARIE SPRECKELS. (Seal)

Signed, sealed and delivered on the 1st day of December, 1913, in the presence of

SAMUEL M. SHORTRIDGE.
JOS. T. O'CONNOR.

State of California,
City and County of San Francisco,—ss.

On this 1st day of December, in the year one thousand nine hundred and thirteen, before me, Charles Francee, a notary public, in and for the City and County of San Francisco, State of California, residing therein, duly commissioned and sworn, appeared John D. Spreckels, Jr., and Edith Marie Spreckels, his wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the City and County of San Francisco, State of California,

the day and year in this certificate first above written.

CHARLES FRANCEE,

Notary Public in and for the City and County of San Francisco, State of California. [5]

That thereafter said Edith Marie Spreckels filed an action for a divorce from said John D. Spreckels, Jr.; that thereafter the said action came on for trial in the Superior Court of the State of California, in and for the City and County of San Francisco, and on the 24th day of August, 1914, an interlocutory decree of divorce was made, signed, filed and entered therein in favor of the said Edith Marie Spreckels; that thereafter and on August 25, 1915, a final decree of divorce was duly made and entered in said action in favor of said Edith Marie Spreckels; that upon the entry of said interlocutory decree of divorce defendant commenced to and thereafter continued to make the monthly payments to plaintiff of Three Hundred Fifty Dollars ($350.00) under and by virtue of the said written agreement hereinabove set forth up to on or about April 1st, 1915; that since the said first day of April, 1915, the defendant has made no payments whatever on account of said monthly payments of Three Hundred Fifty Dollars ($350.00).

VI.

That the minor children of the parties hereto were and are Marie R. Spreckels, Adolph B. Spreckels, and John D. Spreckels III, and the said children are the minor children referred to in said written agreement above set forth.

VII.

That the said Adolph B. Spreckels was supported and maintained by the plaintiff from the first day of February, 1916, to the first day of September, 1916; that plaintiff has not paid anything for the support and maintenance of said Adolph B. Spreckels during said period.

VIII.

That since the entry of said interlocutory decree of divorce plaintiff has paid out and expended for and on behalf [6] of said Marie R. Spreckels an amount in excess of the sum of One Thousand Dollars for her support and maintenance, no part of which has been paid.

WHEREFORE, plaintiff demands judgment against defendant for the sum of Ten Thousand Three Hundred Dollars ($10,300.00), together with interest on all said deferred payments from the time the same become due, at the rate of seven per cent per annum; cost of suit and such other and further relief as may be meet in the premises.

T. T. C. GREGORY,
THOS. A. ALLEN,
Attorneys for Plaintiff.

City, County and State of New York,
Borough of Manhattan,—ss.

Edith H. Wakefield, being first duly sworn, deposes and says that she is the plaintiff named in the foregoing complaint; that she has read the same and knows the contents thereof; and that the same is true of her own knowledge except as to the mat-

ters therein stated on information and belief and as to those matters she believes it to be true.

EDITH H. WAKEFIELD.

Subscribed and sworn to before me this 8th day of May, 1917.

[Seal] B. M. SWIFT,

Commissioner of Deeds, City of New York, Residing in New York County.

New York County Clerk's No. 209.

New York County Register's No. 19080.

Commission expires April 24th, 1919. [7]

No. 19,934—Series B.

State of New York,

County of New York,—ss.

I, William F. Schneider, Clerk of the County of New York, and also Clerk of the Supreme Court for said county, the same being a Court of Record, DO HEREBY CERTIFY, That B. M. Swift, whose name is subscribed to the deposition or certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such deposition, or proof or acknowledgment, a Commissioner of Deeds in and for the City of New York, duly commissioned and sworn, and authorized by the laws of said State, to take depositions and also to administer oaths to be used in any Court in said State and for general purposes; and also to take acknowledgments and proofs of deeds, of conveyances for land, tenements or hereditaments in said State of New York. And further, that I am well acquainted with the handwriting of such Com-

missioner of Deeds, and verily believe that the signature to such deposition or certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said court and county, the 8 day of May, 1917.

[Seal] WM. F. SCHNEIDER,
Clerk.

[Endorsed]: Filed May 23, 1917. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [8]

UNITED STATES OF AMERICA.

In the Southern Division of the District Court of the United States, Northern District of California, Second Division.

EDITH H. WAKEFIELD,
Plaintiff,

vs.

JOHN D. SPRECKELS, Jr.,
Defendant.

Action brought in said District Court, and the Complaint filed in the office of the Clerk of said District Court, in the City and County of San Francisco.

T. T. C. GREGORY and
THOS. A. ALLAN,
Plaintiffs' Attorneys.

(Summons.)

The President of the United States of America, GREETING, to John D. Spreckels, Jr., Defendant.

YOU ARE HEREBY DIRECTED TO APPEAR and answer the complaint in an action entitled as above, brought against you in the Southern Division of the District Court of the United States, in and for the Northern District of California, Second Division, within ten days after the service on you of this summons—if served within this county; or within thirty days if served elsewhere.

And you are hereby notified that unless you appear and answer as above required, the said plaintiff will take judgment for any money or damages demanded in the complaint, as arising upon contract, or she will apply to the Court for any other relief demanded in the complaint.

WITNESS the Honorable WILLIAM C. VAN FLEET, Judge of said District Court, this 23d day of May, in the year of our Lord one thousand nine hundred and seventeen and of our Independence the one hundred and forty-first.

[Seal] WALTER B. MALING,
Clerk.
By J. A. Schaertzer,
Deputy Clerk. [9]

United States Marshal's Office,
Northern District of California.

I HEREBY CERTIFY, that I received the within writ on the 25th day of May, 1917, and per-

sonally served the same on the 25th day of May, 1917, upon John D. Spreckels, Jr., by delivering to, and leaving with, John D. Spreckels, Jr., said defendant named therein personally, at the City and County of San Francisco, in said District, a certified copy thereof, together with a copy of the complaint, attached thereto.

San Francisco, May 25, 1917.

J. B. HOLOHAN,
U. S. Marshal.
By J. M. Freeman,
Office Deputy.

[Endorsed]: Filed May 26, 1917. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [10]

In the District Court of the United States for the Southern District of the Northern District of California, Second Division.

EDITH H. WAKEFIELD,

Plaintiff,

vs.

JOHN D. SPRECKELS, Jr.,

Defendant.

Amended Complaint on Contract.

Comes now the plaintiff above named and as of course files this, her amended complaint, and for cause of action alleges:

I.

That plaintiff is now and has been since on or

about the first day of September, 1916, a citizen of the State of New York and resident of the State and City of New York.

II.

That defendant has been at all the times herein mentioned and now is a citizen and resident of the State of California, and of the City and County of San Francisco, in the Northern District thereof.

III.

Plaintiff is and for more than one year last past has been the wife of Franklin W. Wakefield; that prior to her said marriage to said Franklin W. Wakefield, her name was Edith Marie Spreckels.

IV.

That on or about the 1st day of December, 1913, at the City and County of San Francisco, State of California, plaintiff and defendant made and entered into a certain agreement in writing in the words and figures as following, to wit: [11]

"THIS AGREEMENT, made and entered into this first day of December, 1913, by and between John D. Spreckels, Jr., the party of the first part, and Edith Marie Spreckels, his wife, the party of the second part, both of the City and County of San Francisco, State of California.

WITNESSETH:

That whereas, the party of the second part is about to commence a suit for divorce against the party of the second part and has employed Mr. Joseph T. O'Connor as her counsel for that purpose, and the party of the first part has employed

Mr. Samuel M. Shortridge to represent him in said suit; and

Whereas, said parties desire to avoid the expense of litigation over any and all questions as to their respective property rights, including the right of said second party to temporary and permanent alimony, and also desire to avoid any controversy over the care, custody and maintenance of the minor children of said parties; and

Whereas, said parties being fully and independdently advised by their respective counsel and each being fully informed as to his and her rights, duties and obligations growing out of their marriage relation, have come to an agreement as to each and all of said matters;

NOW, THEREFORE, in consideration of the mutual covenants each to the other running, and of other good and valuable consideration each to the other moving, have agreed and do hereby agree as follows, to wit:

1. That upon the due making and entry of an interlocutory decree of divorce in favor of the said second party the said first party will pay unto the said second party the sum of Three Hundred and Fifty ($350.00) Dollars, monthly, in advance, commencing with the date of the entry of said interlocutory decree, for the period of one year thereafter; that upon the due making and entry of a final decree of divorce in favor of the said second party, said first party will pay unto the [12] said second party, monthly, in advance, the sum of Three Hun-

dred and Fifty ($350.00) Dollars during the remaining period of her natural life.

2. That the said second party agrees to accept said several sums of Three Hundred and Fifty ($350.00) Dollars, monthly in advance, as and for and in full of her right or claim to temporary and permanent alimony, maintenance and support from the said first party.

3. That the said second party hereby releases, quitclaims and grants unto the said first party all her right, title and interest, past, present and future, in and to any anl all community property of the said parties hereto and in and to any and all separate property of the said first party.

4. That the said parties hereto have settled and do hereby forever settle all their property rights, including the right of the said second party to alimony, support and maintenance from the said first party, and that whatever property the said first party now has, be the same community or separate property, and whatever property he may hereafter acquire shall henceforth be considered as and be his separate property, and that whatever proportion the said second party now has or may hereafter acquire shall henceforth be considered as and be her separate property.

5. That whatever deeds or written instruments shall be necessary to effectuate the ends aforesaid and to quiet title to any property now owned or hereafter to be acquired by either of said parties shall be executed by the said parties hereto, each to the other, respectively, on demand.

6. That the care and custody of the minor children of said parties be and remain with and in the said second party, their mother, and that while said children are being supported and maintained by the said second party the said first party will pay to the said second party, for the support and maintenance of said children, the sum of [13] Three Hundred ($300.00) Dollars per month, in advance, that is to say, One Hundred ($100.00) Dollars per month for each of said children supported and maintained by said second party; that the said first party shall have the right to visit said children, and have said children visit him, at any and all times convenient to him and them; that none of said children shall be taken out of the State of California without the previous written consent and approval of both of the said parties hereto.

7. That the said second party shall have the possession and use of the household furniture and effects now in the present home of the said parties hereto, situated at number 1232 Washington Street, in said City and County.

8. That the said second party represents and agrees that she has incurred bills amounting to the sum of $1500.00, which are all the bills incurred by said second party and remaining unpaid, and which said first party agrees to pay.

And said second party agrees to save said first party harmless from the payment of any other bills now existing or hereafter to exist by her incurring, and that if any should come up and be paid by said first party, that he may deduct the same from any

alimony to be paid to said second party under this agreement, or any decree of court.

9. That the provisions of this agreement shall not be modified or abrogated by any interlocutory decree or final decree of divorce in favor of the said second party which may be hereafter made and entered.

IN WITNESS WHEREOF, the said parties have each hereunto set his and her hand and seal, in duplicate, on this the day and year first above written. [14]

JOHN D. SPRECKELS, Jr. (Seal)
EDITH MARIE SPRECKELS. (Seal)

Signed, sealed and delivered on the 1st day of December, 1913, in the presence of

SAMUEL M. SHORTRIDGE.
JOS. T. O'CONNOR.

State of California,
City and County of San Francisco,—ss.

On this 1st day of December, in the year one thousand nine hundred and thirteen, before me, Charles Frances, a notary public, in and for the City and County of San Francisco, State of California, residing therein, duly commissioned and sworn, appeared John D. Spreckels, Jr., and Edith Marie Spreckels, his wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at my office in the

City and County of San Francisco, State of California, the day and year in this certificate first above written.

CHARLES FRANCES,
Notary Public in and for the City and County of San Francisco, State of California. [15]

That thereafter said Edith Marie Spreckels filed an action for a divorce from said John D. Spreckels, Jr.; that thereafter the said action came on for trial in the Superior Court of the State of California, in and for the City and County of San Francisco, and on the 24th day of August, 1914, an interlocutory decree of divorce was made, signed, filed and entered therein in favor of the said Edith Marie Spreckels; that thereafter and on August 25th, 1915, a final decree of divorce was duly made and entered in said action in favor of said Edith Marie Spreckels; that said agreement heretofore set forth was not abrogated, modified or changed by said interlocutory or final decree of divorce, but ever since the execution thereof it has been and now is in full force and effect; that upon the entry of said interlocutory decree of divorce defendant commenced to and thereafter continued to make the monthly payments to plaintiff of Three Hundred Fifty Dollars ($350.00) under and by virtue of the said written agreement hereinabove set forth up to on or about April 1st, 1915; that since the said first day of April, 1915, the defendant has made no payments whatever on account of said monthly payments of Three Hundred Fifty Dollars ($350.00) except the sum of Two Hundred Dollars ($200.00)

VI.

That the minor children of the parties were and are Marie R. Spreckels, Adolph B. Spreckels, and John D. Spreckels III, and the said children are the minor children referred to in said written agreement above set forth.

VII.

That the said Adolph B. Spreckels was supported and maintained by the plaintiff from the first day of February, 1916, to the first day of September, 1916; that plaintiff has not paid anything for the support and maintenance of said Adolph B. Spreckels during said period. [16]

VIII.

That since the entry of said interlocutory decree of divorce plaintiff has supported and maintained said Marie R. Spreckels; that plaintiff has expended from time to time and at different times from the entry of said interlocutory decree of divorce down to the present time, for and on behalf of said Marie R. Spreckels, and for her maintenance and support during said period, an amount in excess of one thousand dollars; that said payments during said period did not equal the sum of one hundred dollars a month; that said amount so paid together with all amounts that were paid by defendant for the support and maintenance of said Marie R. Spreckels during said period did not equal the sum of one thousand dollars and did not equal the sum of one hundred dollars a month during such period; that no part of said sum in excess of one thousand dollars has been paid by defendant.

IX.

That plaintiff has duly performed all the conditions of said agreement on her part to be kept and performed.

WHEREFORE, plaintiff demands judgment against defendant for the sum of Ten Thousand Three Hundred Dollars ($10,300.00) together with interest on all said deferred payments from the time the same become due, at the rate of seven per cent per annum; cost of suit and such other and further relief as may be meet in the premises.

T. T. C. GREGORY,
THOS. A. ALLAN,
Attorneys for Plaintiff. [17]

United States of America,
Northern District of California,
City and County of San Francisco,—ss.

Thos. A. Allan, being first duly sworn, deposes and says that he has read the foregoing amended complaint and knows the contents thereof; that he verily believes the facts therein stated to be true; that he makes this affidavit for and on behalf of plaintiff for the reason that plaintiff is absent from the City and County of San Francisco, and is in the City of New York, State of New York; that affiant is one of plaintiff's attorneys and has his office in the said City and County of San Francisco.

THOS. A. ALLAN.

Subscribed and sworn to before me this 23d day of June, 1917.

[Seal] M. V. COLLINS,

Notary Public in and for the City and County of San Francisco, State of California.

Received copy of within amended complaint on contract and receipt of copy thereof, hereby admitted this 23d day of June, 1917.

SAMUEL M. SHORTRIDGE,
Attorney for Defendant.

[Endorsed]: Filed June 25, 1917. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [18]

(Title of Court and Cause.)

Demurrer to Amended Complaint.

The defendant demurs to the plaintiff's amended complaint on the following grounds:

I.

That the amended complaint does not state facts sufficient to constitute a cause of action.

II.

That the amended complaint is unintelligible in respect of paragraph VIII thereof; that it cannot be determined what the pleader means by the averments of the said paragraph; or during what period of time since the entry of the Interlocutory Decree plaintiff has supported and maintained Marie R. Spreckels; whether she expended in excess of one thousand dollars or any other sum for her main-

tenance and support during said period; or whether the sum alleged to have been expended "on behalf of said Marie R. Spreckels" was for a purpose other than for her maintenance and support; or what sums in that behalf the defendant has paid; or for what period or periods since the entry of the Interlocutory Decree, the said Marie R. Spreckels being supported and maintained by plaintiff, defendant failed to pay plaintiff one hundred dollars per month under said agreement.

III.

The complaint is uncertain in the same respects in which it is hereinabove alleged to be unintelligible.

IV.

That the complaint is ambiguous in the same respects it is hereinabove alleged to be unintelligible.

WHEREFORE, the defendant prays that plaintiff take nothing by her amended complaint and that defendant may go hence [19] with his proper costs herein incurred.

SAMUEL M. SHORTRIDGE,
Attorney for Defendant.

Due service and receipt of a copy of the within demurrer to amended complaint is hereby admitted this third day of July, 1917.

T. T. C. GREGORY,
THOS. A. ALLAN,
Attorneys for Plaintiff.

[Endorsed]: Filed July 3, 1917. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [20]

At a stated term, to wit, the July term, A. D. 1917, of the Southern Division of the United States District Court for the Northern District of California, Second Division, held at the court-room in the City and County of San Francisco, on Monday the 9th day of July, in the year of our Lord one thousand nine hundred and seventeen. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 16,077.

EDITH H. WAKEFIELD

vs.

JOHN D. SPRECKELS, Jr.

Minutes of Court—July 9, 1917—Order Overruling Demurrer to Amended Complaint.

Defendant's demurrer to the amended complaint came on to be heard and after argument being submitted and fully considered, it is ordered that said demurrer be and the same is hereby overruled with leave to defendant to answer within ten days. [21]

In the District Court of the United States for the Southern Division of the Northern District of California, Second Division.

No. 16,077.

EDITH H. WAKEFIELD,

Plaintiff,

vs.

JOHN D. SPRECKELS, Jr.,

Defendant.

Answer to Amended Complaint.

Comes now the defendant in the above-entitled action and answering the amended complaint denies and alleges as follows, to wit:

I.

Admits that the plaintiff filed an action for divorce against the defendant and that thereafter said action came on for trial in the Superior Court of the State of California in and for the City and County of San Francisco.

Admits that on the 24th day of August, 1914, an interlocutory decree of divorce was made, signed and filed in said action in favor of the plaintiff.

Admits that on August 25th, 1915, a final decree of divorce in said action was duly made and entered in favor of the plaintiff; denies that the agreement set forth in said amended complaint was not abrogated, modified and/or [22] changed by said interlocutory decree; denies that ever since the execution of said agreement and/or at any time since

the entry of said interlocutory decree the said agreement has been or now is in full force and/or effect.

Alleges that the defendant has paid to the plaintiff the moneys mentioned in paragraph V of said amended complaint but denies that the said payments or any of them were made under and/or by virtue of said written agreement.

II.

Denies that at any time since the 12th day of February, 1915, the plaintiff has supported and/or maintained the said minor child Marie R. Spreckels; alleges that the defendant has paid to the plaintiff for the support and maintenance of the said minor child the sum of one hundred dollars for the period from August 1st, 1914, to and including February 12th, 1915; denies upon information and belief that the plaintiff has expended from time to time or at different times from the entry of said interlocutory decree or at all, and/or on behalf of said Marie R. Spreckels and/or for her maintenance and/or support during the said period an amount in excess of one thousand dollars or any other sum.

III.

Denies that the plaintiff has performed all the conditions of said agreement on her part to be kept and/or performed. [23]

For further and separate defense to the plaintiff's cause of action the defendant alleges:

That subsequent to the making of the agreement set forth in the amended complaint, to wit, on De-

cember 5th, 1913, the plaintiff herein commenced an action against the defendant herein in the Superior Court of the State of California in and for the City and County of San Francisco to obtain a decree dissolving the bonds of matrimony existing between said parties and awarding to the plaintiff the custody of the minor children of said parties as well as alimony, counsel fees and costs in a reasonable sum to be fixed and specified in said decree, as well as a reasonable sum for the maintenance, care and education of said children, and in that behalf the plaintiff alleged in her complaint filed in the said action that there were three children, the issue of said marriage between the plaintiff and the defendant, to wit, the said Marie R. Spreckels, Adolph B. Spreckels and John D. Spreckels III, and that the plaintiff was a proper person to have their care, custody and control, and the plaintiff further alleged in and by her said complaint that the defendant in the said action was in receipt of an income sufficient to pay any reasonable sum as alimony, counsel fees and costs and any reasonable sum for the maintenance, care and education of said children.

That thereupon the defendant in said action, to wit, this defendant, appeared in the said action and answered the plaintiff's said complaint and the said matters came on regularly to be heard on the 22d day of August, 1914; the said plaintiff and the said defendant appeared by their respective counsel, whereupon proofs were taken and the Court after due consideration ordered, adjudged and decreed,

as and for an interlocutory decree therein, that the plaintiff was [24] entitled to an interlocutory decree adjudging that she had established grounds for the dissolution of the bonds of matrimony theretofore and then existing between the plaintiff and the defendant.

And the Court, after such due consideration of the said cause and the said proofs, further ordered and decreed as follows, to wit: That the custody of the children of the plaintiff and the defendant, to wit, said Marie R. Spreckels, Adolph B. Spreckels and John D. Spreckels, III, be and the same is hereby awarded to the plaintiff; that the defendant pay to the plaintiff for her support during her life the sum of ten dollars per month; that the defendant pay to the plaintiff for the support and maintenance of each of said children the sum of one hundred dollars per month during minority.

That the said interlocutory decree was never appealed from; that it was never set aside or modified in any way; that after the making thereof thenceforth it continued to be, and now is, in full force and effect and the said written agreement set forth in the plaintiff's amended complaint as well as all previous provisions made for the support or maintenance of the plaintiff or the said minor children or for her permanent alimony became superseded by and merged in the said interlocutory decree.

That the defendant has paid to the plaintiff all sums due to her under or by virtue of the said interlocutory decree.

For further and separate defense to the plaintiff's cause of action the defendant alleges:

That immediately following the making of said agreement the defendant placed the plaintiff in the possession of the household furniture and effects mentioned in the said agreement described as then, and being, in the home of said [25] parties, situated at No. 1232 Washington Street in said City and County; that the said household furniture and effects were and are the separate property of the defendant and are of the value of upwards of twenty thousand dollars; that the said property was placed in the possession of the plaintiff by the defendant, under and by virtue of the said agreement in order that she might have the use thereof for herself and the said children; that thereafter and prior to the commencement of this action and without the knowledge or consent of the defendant, and in violation of the said agreement, the plaintiff ceased to use the said property for said purposes, and has failed and refused, and now fails and refuses, to redeliver the said property to the defendant or to put the defendant in possession of the same.

That ever since the month of June, 1915, the plaintiff has failed, refused and neglected to take or assume the care or custody of the minor children of said parties or any of them, for any portion of the time subsequent to June 5, 1915, except that she had the care and custody of said Adolph B. Spreckels from about the 1st day of February, 1916, to about the 31st day of August, 1916.

For further and separate defense to plaintiff's cause of action the defendant alleges:

That in and by the agreement in writing set forth in the amended complaint the plaintiff represented and agreed that she had incurred bills amounting to the sum of $1500.00 and that the same were all the bills incurred by her and remaining unpaid, which said bills amounting to $1500.00 the defendant agreed to pay. That the plaintiff agreed to save the defendant harmless in the payment of any other bills then existing or thereafter to exist incurred by her in excess of [26] the sum of $1500.00 and agreed that if any such bills should come up or be paid by said defendant that he might deduct the amount thereof from any alimony to be paid to her under the said agreement or under any decree of court.

Alleges that at the time of making said agreement the plaintiff had incurred bills amounting to the sum of $2258.68, which said bills were then existing, outstanding and unpaid; that she did not save the defendant harmless from the payment of that portion of said amount in excess of $1500.00, but that said bills did come up and were paid by the defendant to the amount of $2258.68, said sum being $758.68 in excess of the amount so limited, no part of which excess has ever been repaid to the defendant.

WHEREFORE, the defendant prays that the plaintiff take nothing by her action, but that the defendant have judgment for his proper costs.

SAMUEL M. SHORTRIDGE,
Attorney for Defendant. [27]

State of California,
City and County of San Francisco,—ss.

John D. Spreckels, Jr., being first duly sworn, deposes and says: That he is the defendant in the above-entitled action; that he has read the foregoing answer to amended complaint and knows the contents thereof; that the same is true of his own knowledge except as to the matters which are therein stated on his information or belief and as to those matters that he believes it to be true.

JOHN D. SPRECKELS, Jr.

Subscribed and sworn to before me this 5th day of September, 1917.

[Seal] JULIA W. CRUM,
Notary Public, in and for the City and County of San Francisco, State of California.

Due service and receipt of a copy of the within answer to amended complaint is hereby admitted this 5th day of September, 1917.

T. T. C. GREGORY,
T. A. ALLAN,
Attorneys for Plaintiff.

[Endorsed]: Filed Sept. 5, 1917. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [28]

(Title of Court and Cause.)

(Stipulation Waiving Jury.)

It is hereby stipulated and agreed between the parties hereto that a jury trial is hereby waived in the above-entitled action, and said action is hereby set for July 14, 1920.

Dated: May 28th, 1920.

JAMES F. PECK,
CHARLES W. BYRNES,
Attorneys for Plaintiff.
SAMUEL M. SHORTRIDGE,
Attorney for Defendant.

Approved: WM. C. VAN FLEET,
Judge.

[Endorsed]: Filed June 5, 1920. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [29]

(Title of Court and Cause.)

Findings of Fact and Conclusions of Law.

This cause came on for trial before the Court, Honorable Wm. H. Sawtelle, sitting as Judge of the District Court of the United States for the Southern Division of the Northern District of the State of California, Second Divison; Samuel M. Shortridge, Esq., and Bert Schlesinger, Esq., appearing as attorneys for the defendant, and James F. Peck, Esq., and Charles W. Byrnes, Esq., appearing as attorneys for the plaintiff; evidence was produced by the respective parties, plaintiff and defendant, and after argument the cause was submitted for decision. The defendant, before submission of the cause, requested and the Court granted the request for findings. The Court now finds upon the facts at issue as follows:

1. That the plaintiff at the time of filing the complaint herein and for a long time thereafter

was a citizen of the State of New York and a resident of the State and City of New York.

2. That the defendant was at the time of filing the complaint herein and for a long time prior thereto had been, a citizen and resident of the State of California and of the City and County of San Francisco, and in the Northern District.

3. That plaintiff is and at the time of the filing of the complaint herein was, and for more than one year prior thereto had been the wife of Franklin W. Wakefield. That prior to the said marriage to said Franklin W. Wakefield her name was Edith Marie Spreckels.

4. That on or about the first day of December, 1913, at the City and County of San Francisco, State of California, plaintiff and defendant made and entered into a certain agreement in writing, a copy of which said agreement is contained in paragraph IV of the plaintiff's amended complaint here. [30]

5. That the purpose of said contract and of the parties thereto was not to bring about a dissolution of the marriage relation, or to put an end to said marriage relation, or to facilitate procuring a divorce by either party thereto; and the making of the contract did not influence or tend to influence the plaintiff in procuring a divorce from defendant, and it did not influence or tend to influence defendant in resisting plaintiff's application therefor; and the making of said contract was not intended by the parties thereto, or either of them, to influence or tend to influence the plaintiff in procuring a divorce from the defendant; and the mak-

ing of the said contract was not intended by the parties thereto, or either of them, to influence or tend to influence the defendant in resisting plaintiff's action for divorce, and the said contract was not intended to and did not influence or tend to influence the plaintiff in commencing or prosecuting the action to procure a divorce from defendant alleged in plaintiff's complaint, or the defendant in resisting plaintiff's action for divorce.

6. That there was no collusion between the parties to said contract or to said divorce proceedings and that at the trial therein, as appears in the interlocutory decree, upon the proofs taken therein, the Court found all of the allegations of the complaint were true and that they were sustained by the testimony.

7. That said contract was not induced by and was not because of or based upon any consideration of any promise or understanding that an action should be commenced to dissolve the marriage then existing between plaintiff and defendant, but was made because of a desire of each of the contracting parties to avoid the expense of litigation over any and all questions as to their respective property rights, including [31] the right of said second party in said contract, the plaintiff herein, to temporary and permanent alimony and to avoid any controversy over the care, custody and maintenance of the minor children of said parties, and upon the mutual covenants each to the other running, and all other good and valuable considerations each to the other moving.

8. That subsequent to the making of the agreement set forth in the amended complaint, to wit, on December 5th, 1913, the plaintiff herein commenced an action against the defendant herein in the Superior Court of the State of California, in and for the County of San Francisco, to obtain a decree dissolving the bonds of matrimony existing between said parties and awarding to the plaintiff the custody of the minor children of said parties, as well as alimony, counsel fees and costs, in a reasonable sum, to be fixed and specified in said decree, and a reasonable sum for the care, maintenance and education of said minor children, and in said complaint, as grounds for divorce, the said plaintiff alleged therein that the defendant had wrongfully inflicted and now wrongfully inflicts upon plaintiff grevious mental suffering, resulting in grevious bodily injury, which acts of cruelty were specifically stated in said complaint, and plaintiff's said complaint filed in said divorce action plaintiff alleged that there were three children the issue of the marriage between the plaintiff and defendant, to wit, the said Marie Spreckels, Adolph Spreckels, and John D. Spreckels, III, and that the plaintiff was the proper person to have their care, custody and control; and the plaintiff further alleged in and by her said complaint in said divorce action that the defendant in said action was in receipt of an income sufficient to pay any reasonable sum as alimony, counsel feees and costs, and any reasonable sum for the maintenance, care and education of the said children [32]

9. That thereafter the defendant in said divorce

action, to wit, the defendant in this action appeared in said action and answered the plaintiff's said complaint and denied the allegations of cruelty alleged in plaintiff's complaint in said divorce action specifically.

That the said trial of said divorce action came on regularly to be heard before the Superior Court of the City and County of San Francisco, State of California, on the 22d day of August, 1914. The said plaintiff and said defendant appeared in said action at said trial by their respective counsel. Whereupon evidence was produced before the Court and the Court, in said divorce action, found that all the allegations of the complaint therein were true and they were sustained by testimony free from all legal exceptions as to its competency, admissibility and sufficiency, and that all the allegations of the defendant's answer in the divorce action were untrue.

10. That the plaintiff and defendant had been living separate and apart for a period of more than one year, continuously, before the making of said contract alleged in paragraph IV of the amended complaint herein.

11. That the parties did not at the time of entering into the said contract intend that the contract should be merged in any decree of divorce, interlocutory or final, which might be subsequently rendered by any Court granting a decree of divorce.

12. That on the 25th day of August, 1915, in the said divorce action commenced in the Superior Court of the State of California, in and for the City

and County of San Francisco, a final decree of divorce in said action was duly given, made and entered, and therein it was adjudicated, among other things, that the judgment shall not effect the said contract alleged in paragraph IV of the amended complaint herein. [33]

13. That the said contract alleged in paragraph IV of the amended complaint herein was not merged in the said interlocutory or final decree of divorce, and the said contract is in full force and effect.

14. That the plaintiff has not ceased to use the said household furniture and effects mentioned in and described in the said contract set out in paragraph IV of the amended complaint herein, and the same is now in the possession of the plaintiff.

15. That in and by the agreement in writing set forth in the amended complaint, plaintiff represented and agreed that she had incurred bills amounting to the sum of Fifteen Hundred Dollars ($1500.00) and that the same were all the bills incurred by her remain*ed* unpaid, which said bills, to the amount of Fifteen Hundred Dollars ($1500.00), the defendant agreed to pay. That the plaintiff agreed to save the defendant harmless in the payment of any other bills then existing or thereafter to exist incurred by her, in excess of Fifteen Hundred Dollars ($1500.00), and agreed that if any such bills in excess of Fifteen Hundred Dollars ($1500.00) should come up or be paid by said defendant that he might deduct the amount thereof from any sum to be paid to plaintiff under the said agreement. That at the time of making said agree-

ment the plaintiff had incurred bills amounting to the sum of Two Thousand Two Hundred Fifty-eight and 60/100ths Dollars ($2225.68), which said bills were then existing, outstanding and unpaid. That said bills did come up and were paid by the said defendant to the said amount of Two Thousand Two Hundred Fifty-eight and 68/100ths Dollars ($2258.68), that is, to the sum of Seven Hundred Fifty-eight and 68/100ths Dollars ($758.68) in excess of the said Fifteen Hundred Dollars ($1500.00). That no part of said excess of Seven Hundred Fifty-eight and 68/100ths Dollars ($758.68) has ever been paid to the defendant by the plaintiff. [34]

16. That said defendant paid the plaintiff monthly the sum of Three Hundred and Fifty Dollars ($350.00) up to but not including the 24th day of April, 1915. That said defendant did not pay the installment of Three Hundred and Fifty dollars ($350) promised in said contract to be paid on the 24th day of April, 1915, but did pay on account thereof the sum of Two Hundred Dollars ($200.00). That no sum was paid by the defendant to plaintiff on account of said Three Hundred and Fifty Dollars ($350.00) monthly promised in said contract to be paid except that said monthly sum of Three Hundred and Fifty Dollars ($350.00) was paid in advance monthly from and including the 24th day of August, 1914, to and including the 24th day of March, 1915, and that said sum of Two Hundred Dollars ($200.00) was paid on the 24th day of April, 1915.

17. That the plaintiff paid for the support and

maintenance of the said child, Adolph B. Spreckels, from and including the first day of February, 1916, to and including the first day of September, 1916. That the defendant has not paid the sum of One Hundred Dollars ($100.00) per month promised in said contract to be paid for the support and maintenance of the said Adolph B. Spreckels for the said period of time, or any part thereof.

That the said defendant has not paid the sum of Three Hundred and Fifty Dollars ($350.00) monthly promised in said contract to be paid plaintiff on the 24th day of April, 1915, except the said sum of Two Hundred Dollars ($200.00), nor has the defendant paid to the plaintiff the installment of Three Hundred and Fifty Dollars ($350.00) monthly, or any part thereof, so promised to be paid since the 24th day of May, 1915.

18. Counsel for the defendant having, at the trial, avowed that there was no defense interposed to this action on the ground that the deeds referred to in the contract and record were not executed as provided in the contract and that the same was not an [35] issue herein, and having objected to the introduction of testimony with reference thereto, the said objection was sustained and the testimony so offered was excluded.

That all facts alleged in the complaint are true except as to those hereinbefore otherwise specified.

Conclusions of Law.

As conclusions of law the Court finds that the plaintiff is entitled to recover judgment against the

defendant for the sum of Eight Thousand, Five Hundred and Fifty Dollars ($8,550.00) and interest thereon at the rate of seven per cent (7%) per annum to date as follows:

On One Hundred and Fifty Dollars ($150.00) thereof from April 24th, 1915, and on one of each of the Three Hundred and Fifty Dollars ($350.00) contained in said balance thereof from the 24th day of each succeeding month thereafter to and including the 24th day of April, 1917; and is further entitled to recover judgment against defendant for the sum of Seven Hundred Dollars ($700.00), with interest thereon at the rate of seven per cent (7%) per annum to date, as follows: On one of each of the One Hundred Dollars ($100.00) contained in said Seven Hundred Dollars ($700.00) from the first day of each month from and including September 1st, 1916, inclusive, from which should be deducted the sum of Seven Hundred Fifty-eight and 68/100ths Dollars ($758.68) and interest on said Seven Hundred Fifty-eight and 68/100ths Dollars ($758.68) from the first day of December, 1913, to date at the rate of seven per cent (7%) per annum.

That the said contract mentioned in paragraph IV of plaintiff's amended complaint was not merged or superseded by the interlocutory or final decree of divorce alleged in defendant's answer, and the said contract is in full force as a subsisting and binding agreement and is not void or invalid or in the contravention of public policy.

WM. H. SAWTELLE,

Judge of the United States District Court. [36]

Receipt of a copy of the within findings of fact and conclusions of law is hereby admitted this 8th day of February, 1921.

BERT SCHLESINGER,
SAMUEL M. SHORTRIDGE,
Attorneys for Defendant.

[Endorsed]: Filed June 18, 1921. Walter B. Maling, Clerk. [37]

(Title of Court and Cause.)

Judgment.

Trial by jury was waived. The defendant, before submission of the case, requested and the Court granted the request for findings. The Court signed and filed findings in the case on the 18th day of July, 1921, and therein ordered that judgment be entered in accordance therewith.

WHEREFORE, pursuant to said findings and the order therein contained, it is ORDERED, ADJUDGED AND DECREED that Edith H. Wakefield recover judgment against the defendant John D. Spreckels, Jr., for the sum of Eleven Thousand Four Hundred and Thirteen and 52/100 ($11,413.52) Dollars, being Eight Thousand Five Hundred and Fifty Dollars ($8550), and interest thereon at the rate of seven per cent (7%) per annum, as follows:

On One Hundred and Fifty Dollars ($150) of said Eight Thousand Five Hundred and Fifty Dollars ($8550) from April 24th, 1915, and on one

of each of the Three Hundred and Fifty Dollars ($350) contained in said balance of said Eight Thousand Five Hundred and Fifty Dollars ($8550) from the 24th day of each succeeding month after April 24th, 1915, to and including the 24th day of April, 1917; and Seven Hundred Dollars ($700), with interest on said Seven Hundred Dollars at the rate of seven per cent (7%) per annum to the 18th day of June 1921, as follows: On one of each of the One Hundred Dollars ($100) contained in said Seven Hundred Dollars ($700) from the 1st day of each month from and including September 1st, 1916, less the sum of Seven Hundred Fifty-eight Dollars and 68/100ths ($758.68) and interest on said $758.68 from the first day of December, 1913, to the 18th day of June, 1921, at the rate of seven per cent (7%) per annum, and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the said contract mentioned in paragraph IV of plaintiff's amended [38] complaint was not merged or superseded by the interlocutory or final decree of divorce alleged in defendant's answer, and the said contract is in full force as a subsisting and binding agreement and is not void or invalid or in the contravention of public policy.

Judgment entered this 18th day of June, 1921.

WALTER B. MALING,
Clerk. [39]

In the Southern Division of the District Court of the United States in and for the Northern District of California, Second Division.

No. 16,077.

EDITH H. WAKEFIELD,

Plaintiff,

vs.

JOHN D. SPRECKELS, Jr.,

Defendant.

Order Substituting Party Defendant.

It appearing to the satisfaction of the Court that John D. Spreckels, Jr., the defendant above named is dead, and that John D. Spreckels, his father, has by order of the Superior Court of the State of California, for the City and County of San Francisco, been appointed special administrator of the Estate of John D. Spreckels, Jr., deceased, and has duly qualified as such administrator; on motion of Samuel M. Shortridge, attorney of record for the defendant in the above-entitled action, and pursuant to Rule 102 of this Court, it is ordered that John D. Spreckels, special administrator of the estate of John D. Spreckels, Jr., deceased, be and he is hereby substituted as the defendant in the above-entitled action in lieu of John D. Spreckels, Jr., deceased, and it is further ordered that this action be continued by the said John D. Spreckels, special administrator of the estate of John D. Spreckels, Jr., deceased, substituted as defendant

herein in lieu of John D. Spreckels, Jr., deceased; and further ordered that all papers and proceedings in this action [40] be hereafter entitled accordingly.

Dated: December 14, 1921.

FRANK H. RUDKIN,
United States District Judge.

[Endorsed]: Filed Dec. 14, 1921. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [41]

In the Southern Division of the District Court of the United States in and for the Northern District of California, Second Division.

No. 16,077.

EDITH H. WAKEFIELD,

Plaintiff,

vs.

JOHN D. SPRECKELS, Jr.,

Defendant.

Admission of Service of Order of Substitution.

Received this 14th day of December, 1921, certified copy of order substituting John D. Spreckels, Special Administrator of the Estate of John D. Spreckels, Jr., deceased, as party defendant in the above-entitled action, in lieu of John D. Spreckels, Jr., deceased, and that said action be continued by the said John D. Spreckels, special administrator

of the Estate of John D. Spreckels, Jr., deceased, substituted as defendant herein.

JAMES F. PECK,
CHARLES W. BYRNES,
Attorneys for Plaintiff.

[Endorsed]: Filed Dec. 14, 1921. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [42]

In the District Court of the United States for the Southern Division of the Northern District of California, Second Division.

EDITH H. WAKEFIELD,

Plaintiff,

vs.

JOHN D. SPRECKELS, Special Administrator of the Estate of JOHN D. SPRECKELS, Jr., Deceased,

Defendant.

Bill of Exceptions.

BE IT REMEMBERED that the above-entitled cause came on regularly for trial on the 14th day of July, 1920, at the hour of ten o'clock A. M. of said day, Hon. Wm. H. Sawtelle, Judge presiding, a trial by jury having been expressly waived by the parties; James F. Peck, Esq. and Charles W. Byrnes, Esq., appearing as attorneys for the plaintiff, and Bert Schlesinger, Esq., appearing as attorney for the defendant; whereupon the following proceedings were had and testimony taken:

Testimony of Edith Huntington Wakefield, in Her Own Behalf.

EDITH HUNTINGTON WAKEFIELD, called as a witness for the plaintiff, being duly sworn, testified as follows:

"My name is Edith H. Wakefield. I am the wife of Mr. Frank Wakefield at the present time. I was the wife, at one time, of the defendant John D. Spreckels, Jr.

At the time this suit was brought, during the year 1917, I resided in New York City with my husband. At that time John D. Spreckels, Jr., resided in San Francisco.

In this agreement made and entered into between myself and John D. Spreckels, Jr., there was certain household furniture [43] mentioned. That household furniture has been, since the time of the interlocutory decree of divorce between myself and Mr. Spreckels first at a house on Filbert Street, in San Francisco; then I put it in storage with the Pierce Rodolph Stringer Company, in San Francisco, and I next put it in a house on Hyde Street, in San Francisco. Part of it is there now, and part of it in the Stringer warehouse, and some of it is down at Papeete, in Tahiti. That furniture has been in my possession and control since the time of the interlocutory divorce between myself and Mr. Spreckels, and it is now."

The plaintiff then introduced in evidence the following agreement:

THIS AGREEMENT made and entered into this 1st day of December, 1913, by and between John D. Spreckels, Jr., the party of the first part, and Edith Marie Spreckels, his wife, the party of the second part, both of the City and County of San Francisco, State of California,

WITNESSETH:

That whereas, the party of the second part is about to commence a suit for divorce against the party of the second part and has employed Mr. Joseph T. O'Connor as her counsel for that purpose, and the party of the first part has employed Mr. Samuel M. Shortridge to represent him in the said suit; and,

Whereas, said parties desire to avoid the expense of litigation over any and all questions as to their respective property rights, including the right of said second party to temporary and permanent alimony, and also desire to avoid any controversy over the care, custody and maintenance of the minor children of said parties; and,

Whereas, said parties being fully and independently advised by their respective counsel and each being fully informed as to his and her rights, duties and obligations growing out of their marriage relation, have come to an agreement as to each and all of said matters;

NOW THEREFORE, in consideration of the mutual covenants each to the other running, and of other good and valuable considerations each to the other moving, have agreed and do hereby agree as follows, to wit:

1. That upon the due making and entry of an interlocutory decree of divorce in favor of the said party of the first party will pay unto the said second party the sum of Three Hundred and Fifty ($350.00) Dollars, monthly, in advance, commencing with the date of the entry of said interlocutory decree, for the period of one year thereafter; that upon the due making and entry of a final decree of divorce in favor of the said second party, said [44] first party will pay unto the said second party, monthly, in advance, the sum of Three Hundred and Fifty ($350.00) Dollars during the remaining period of her natural life.

2. That the said second party agrees to accept said several sums of Three Hundred and Fifty ($350.00) Dollars, monthly, in advance, as and for and in full of her right or claim to temporary and permanent alimony, maintenance and support from the said first party.

3. That the said second party hereby releases, quitclaims and grants unto the said first party all her right, title and interest, past, present and future, in and to any and all community property of the said parties hereto and in and to any and all separate property of the said first party.

4. That the said parties hereto have settled and do hereby forever settle all their property rights, including the right of the said second party to alimony, support and maintenance from the said first party, and that whatever property the said first party now has, be the same community or separate property, and whatever property he may

hereafter acquire shall henceforth be considered as and be his separate property, and that whatever property the said second party now has or may hereafter acquire shall henceforth be considered as and be her separate property.

5. That whatever deeds or written instruments shall be necessary to effectuate the ends aforesaid and to quiet title to any property now owned or hereafter to be acquired by either of said parties shall be executed by the said parties hereto, each to the other, respectively, on demand.

6. That the care and custody of the minor children of said parties be and remain with and in the said second party, their mother, and that while said children are being supported and maintained by the said second party the said first party will pay to the said second party, for the support and maintenance of said children, the sum of Three Hundred ($300.00) Dollars per month, in advance, that is to say, One Hundred ($100.00) Dollars per month for each of said children supported and maintained by said second party; that the said first party shall have the right to visit said children, and have said children visit with him, at any and all times convenient to him and them; that none of said children shall be taken out of the State of California without the previous written consent and approval of both of the said parties hereto.

7. That the said second party shall have the possession and use of the household furniture and effects now in the present home of the said parties

hereto, situated at number 1232 Washington Street, in said City and County.

8. That the said second party represents and agrees that she has incurred bills amounting to the sum of $1500.00, which are all the bills incurred by said second party and remaining unpaid, and which said first party agrees to pay. [45]

And said second party agrees to save said first party harmless from the payment of any other bills now existing or hereafter to exist by her incurring, and that if any should come up and be paid by said first party, that he may deduct the same from any alimony to be paid said second party under this agreement, or any decree of court.

9. That the provisions of this agreement shall not be modified or abrogated by any interlocutory decree or final decree of divorce in favor of the said second party which may be hereafter made and entered.

IN WITNESS WHEREOF, the said parties have each hereunto set his and her hand and seal, in duplicate, on this the day and year first above written.

JOHN D. SPRECKELS, Jr. (Seal)
EDITH MARIE SPRECKELS. (Seal)

Signed, sealed and delivered on the 1st day of December, 1913, in the presence of

SAMUEL M. SHORTRIDGE,
JOS. T. O'CONNOR.

Acknowledged before

CHARLES FRENCES, N. P."

(Testimony of Edith Huntington Wakefield.)

That plaintiff introduced evidence of the performance by her of all the covenants and promises on her part in said agreement on her part to be performed.

"I have not been paid anything on account of this contract since April 15, 1915. The payments were made to me on account of the contract to the 15th of April, 1915. Adolph, one of the children of Mr. Spreckels and myself, has been with me for a period of six months, and I have maintained him. I have not received the $100 a month for the maintenance of that child. (Tr. p. 7.) [46] I have not received the sum of $350 a month, or any part of it, from the 15th day of April, 1915, down to the present time. The minor children of this marriage are Mary, Adolph and John. (Tr. p. 8)"

On cross-examination the witness testified as follows:

"My two boys are in a school down at Palo Alto. The children are in my custody. They are in California. I haven't them with me in the East, because we are traveling to such an extent, myself and my husband, that it is not well for the children to have them with us all the time on account of their schooling. The decree of divorce provided that I should have the legal custody of the children, because that was stipulated in the contract. Since that decree I have lived out of the State.

At the time I had Adolph down in Papette I contributed toward his support. I have not maintained them at school, because I had an arrange-

(Testimony of Edith Huntington Wakefield.)

ment with Mr. Spreckels' father to maintain them for me, and their maintenance has been paid for by Mr. Spreckels.

I reside in New York. New York is our home when not traveling.

Q. Mrs. Spreckels, I will call your attention to clause 1 of the agreement:

'That upon the due making and entry of an interlocutory decree of divorce in favor of the said second party the said first party will pay unto the said second party the sum of $350, monthly, in advance, commencing with the date of the entry of said interlocutory decree, for the period of one year thereafter; that upon the due making and entry of a final decree of divorce in favor of the said second party, said first party will pay unto the said second party, monthly in advance, the sum of $350, during the remaining period of her natural life.'

[47]

'That the said second party agrees to accept said several sums of $350, monthly in advance, as and for and in full of her right or claim to temporary and permanent alimony, maintenance and support, from said first party.'

Did you have any discussion concerning those two clauses of the agreement before the agreement was executed, with Mr. Spreckels? A. No.

Q. But you, of course, knew of those clauses and were familiar with them before you signed the document?

(Testimony of Edith Huntington Wakefield.)

A. We just spoke about the community property and about the alimony.

Q. You understood that if you should obtain a decree of divorce, that you were to be paid the sums of money therein mentioned in the contract, did you?

A. I did not understand that; I knew I was going to get my alimony.

Q. Did you understand the agreement, Mrs. Wakefield, before you signed it?

A. For the community property and alimony, yes.

Q. These different clauses were read to by your attorney, Mr. O'Connor, who at that time represented you?

A. I think it was entirely in Mr. O'Connor's hands.

Mr. Joseph T. O'Connor was my attorney. Mr. Shortridge represented Mr. Spreckels.

This agreement was followed by a suit for divorce brought by me, and that proceeding went to a judgment in my favor. I obtained a decree.

I recall that this agreement contains a clause that I was to maintain the children.

I never had the children out of the state with the exception of Adolph, when I had permission from Mr. Spreckels to take him. (Tr. pp. 8–11) [48]

On redirect examination the witness testified as follows:

At the time this agreement was signed at the

(Testimony of Edith Huntington Wakefield.)

office of Mr. O'Connor, I read it over. Mr. Spreckels was there, but not Mr. Shortridge. (Tr. p. 11)

Mr. PECK.—That is our case.

Whereupon the defendant proceeded with his defense to said action, and made the following offer.

Mr. SCHLESINGER.—If your Honor please, we will now offer in evidence, on behalf of the defendant, a certified copy of the judgment-roll in the case of Edith Marie Spreckels v. John D. Spreckels, Jr., and numbered in the Superior Court of the City and County of San Francisco, 53,231. The judgment-roll consists of the complaint in divorce, the answer of the defendant, the interlocutory decree of divorce, and the final decree of divorce. These papers are duly and properly certified.

The COURT.—They will be admitted.

(The document was here marked Defendant's Exhibit "A,") (Tr. p. 11.) [49]

Defendant's Exhibit "A."

In the Superior Court of the City and County of San Francisco, State of California.

EDITH MARIE SPRECKELS,

Plaintiff,

vs.

JOHN D. SPRECKELS, Jr.,

Defendant.

Complaint in Divorce.

Plaintiff complains of defendant and for cause of action alleges:

I.

That plaintiff is now, and for more than one year next preceding the commencement of this action has been, a resident of the State of California and of the City and County of San Francisco, in said state, actually living and residing therein.

II.

That plaintiff and defendant intermarried in the City and County of San Francisco, State of California, on the 15th day of December, 1902, and ever since have been, and now, are husband and wife.

III.

That there are three children the issue of said marriage, to wit, Marie Spreckels, aged ten years, Adolph Spreckels, aged seven years, and John D. Spreckels, III, aged three years. That said children are now living and residing with plaintiff, and are under her care, custody and control, and plaintiff is a proper person to have the charge, custody and control of said children.

IV.

That there is no community property of plaintiff and defendant.

V.

That defendant has wrongfully inflicted, and now inflicts, upon plaintiff, grevious mental suffering, resulting in grevious bodily injury, in the manner following, to wit:

That for the period of several years immediately preceding the commencement of this action, de-

fendant habitually made to plaintiff such remarks as were most calculated to wound, and did wound, plaintiff's feelings; that during said period defendant adopted towards plaintiff a quarrelsome attitude and habitually found fault with plaintiff and quarreled with plaintiff without any cause or justification; that during said period defendant habitually absented himself from plaintiff, and from their home, for periods varying from two days to two weeks, without notice [50] or explanation to plaintiff; that during said period defendant wrongfully adopted, and does now adopt, a course of so acting and speaking towards and to plaintiff, and of and concerning her friends, as to greatly humiliate plaintiff and cause her grevious mental pain and suffering; that, without any cause or provocation on her part, defendant adopted a course of nagging and unwarrantably and unjustly criticising plaintiff in the presence and hearing of third persons, whereby plaintiff has been grieved and humiliated; that, without just cause or provocation on her part, defendant has, for a long time past, treated plaintiff with studied indifference and disrespect; that said acts and conduct, on the part of said defendant, have inflicted upon plaintiff grevious mental suffering, as a result of which plaintiff's health has been undermined and impaired, and she has suffered, and will continue to suffer, bodily injury as a result thereof.

VI.

That defendant is in receipt of an income sufficient to pay any reasonable sum as alimony, coun-

sel fees and costs, and any reasonable sum for the maintenance, care and education of said children.

Wherefore, plaintiff prays judgment that the bonds of matrimony between plaintiff and defendant be dissolved and that an interlocutory decree be entered herein, declaring that plaintiff is entitled to a divorce upon grounds of defendant's extreme cruelty, and is entitled to the custody of said children and to alimony, counsel fees and costs therein to be fixed and specified, and to a reasonable sum, to be in said decree fixed and specified, for the maintenance, care and education of said children.

JOS. T. O'CONNOR,
Attorney for Plaintiff.

State of California,
City and County of San Francisco,—ss.

Edith Marie Spreckels, being duly sworn, deposes and says: That she is the plaintiff in the above-entitled action; that she has read the foregoing complaint and knows the contents thereof, and the same is true of her own knowledge except as to matters therein stated on information or belief, and, as to those matters, that she believes it to be true.

EDITH MARIE SPRECKELS.

Subscribed and sworn to before me this 5th day of December, 1913.

MATTHEW BRADY,
Notary Public in and for the City and County of San Francisco, State of California.

Filed December 5, 1913. H. I. Mulcrevy, Clerk. [51]

In the Superior Court of the State of California, in and for the City and County of San Francisco.

No. 53,221.

EDITH MARIE SPRECKELS,

Plaintiff,

vs.

JOHN D. SPRECKELS, Jr.,

Defendant.

Answer.

Comes now the defendant and answering the complaint of the plaintiff admits and denies as follows:

I.

Admits the facts alleged in paragraph I thereof.

II.

Admits the facts alleged in paragraph II thereof.

III.

Admits the facts alleged in paragraph III thereof.

IV.

Admits the facts alleged in paragraph IV thereof.

V.

Denies that he has wrongfully inflicted or now inflicts upon plaintiff grevious mental suffering, resulting in grevious bodily injury in the manner alleged, or otherwise, or at all.

Denies that for the period of several years immediately preceding the commencement of this

action he habitually made to plaintiff such remarks as were most calculated to wound, or which did wound, plaintiff's feelings; denies that during said period defendant adopted towards plaintiff a quarrelsome attitude, habitually found fault with plaintiff, or quarreled with plaintiff without any cause or justification; denies that during said period defendant habitually absented himself from plaintiff, or from their home, for periods varying from two days to two weeks, without notice or explanation to plaintiff; denies that during said period defendant wrongfully adopted, or does now adopt, a cause of so acting and speaking towards and to plaintiff and of and concerning her friends as to greatly humiliate plaintiff or cause her grievous mental pain or suffering; denies that without any cause or provocation on plaintiff's part defendant adopted a course of nagging or unwarrantably or unjustly criticising plaintiff in the presence or hearing of other persons, whereby plaintiff has been grieved or humiliated; denies that without just cause or provocation on plaintiff's part he has for a long time past treated plaintiff with studied indifference or disrespect; denies that said acts and conduct, or said acts or [52] conduct, on his part have inflicted upon plaintiff grevious mental suffering, as a result of which plaintiff's health has been undermined or impaired, or that plaintiff has suffered, or will continue to suffer bodily injury as a result thereof.

VI.

Admits the facts alleged in paragraph VI of said complaint.

Wherefore, defendant prays that plaintiff take nothing by her said complaint, and that he be hence dismissed with his costs.

SAMUEL M. SHORTRIDGE,
Attorney for Defendant.

State of California,
City and County of San Francisco,—ss.

John D. Spreckels, Jr., being duly sworn, deposes and says: That he is the defendant in the above-entitled action; that he has read the foregoing answer and knows the contents thereof, that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

JOHN D. SPRECKELS, Jr.

Subscribed and sworn to before me this 17th day of December, A. D. 1913.

[Seal] CHARLES FRANCEL,
Notary Public in and for the City and County of San Francisco, State of California.

Filed December 22, 1913. H. I. Mulcrevy, Clerk. [53]

In the Superior Court of the City and County of San Francisco, State of California.

No. 53,221—Dept. No. 10.

EDITH MARIE SPRECKELS,

Plaintiff,

vs.

JOHN D. SPRECKELS, Jr.,

Defendant.

Interlocutory Decree of Divorce.

This cause came on regularly for trial this 22d day of August, 1914, upon the plaintiff's complaint herein and upon the answer of defendants thereto, the plaintiff appearing by Joseph T. O'Connor, Esq., her attorney, and the defendant appearing by Samuel M. Shortridge, Esq., his attorney, and upon the proofs taken therein, from which it appears and the Court finds that all of the allegations of the complaint are true and that they are sustained by testimony free from all legal exceptions as to its competency, admissibility and sufficiency, and that all the allegations of the answer are untrue; and all and singular the law and the premises being by the Court understood and fully considered:

It is hereby ordered, adjudged and decreed as and for an interlocutory decree herein, that plaintiff is entitled to an interlocutory decree of this Court, adjudging that she has established grounds for the dissolution of the bonds of matrimony

heretofore and now existing between plaintiff and defendant; and subject to the provisions of the statute in such cases made and provided and in pursuance thereof such interlocutory decree is hereby made on the grounds of defendant's extreme cruelty and that upon the expiration of one year from the entry of this decree, final judgment granting such decree and restoring said parties to the status of single persons be entered herein.

It is further ordered, adjudged and decreed that the custody of the children of plaintiff and defendant, to wit: Marie Spreckels, Adolph Spreckels and John D. Spreckels, III be and the same is hereby awarded to plaintiff. That the defendant pay to plaintiff for her support during her life the sum of ten (10) dollars per month; that defendant pay to plaintiff for the maintenance of each of said children the sum of one hundred (100) dollars per month during the minority of said children and pay to plaintiff as attorney's fees herein the sum of fifteen hundred dollars.

Done in open court this 22d day of August, 1914.

THOS. F. GRAHAM,

Judge of said Superior Court.

Recorded Book 75, page 127, August 24, 1914.

Filed August 22, 1914. H. I. Mulcrevy, Clerk.

[54]

In the Superior Court of the State of California, in and for the City and County of San Francisco.

No. 53,221—Dept. 10.

EDITH MARIE SPRECKELS,

Plaintiff,

vs.

JOHN D. SPRECKELS, Jr.,

Defendant.

Final Decree of Divorce.

This cause came on regularly to be heard on the 22d day of August, 1914, at which time, upon the plaintiff's complaint herein and upon the answer of defendant thereto, it was proven to the satisfaction of the Court, and the Court found that all of the allegations of the said complaint were true, and that they were sustained by testimony free from all legal exceptions as to its competency, admissibility and sufficiency, and that all of the allegations of said answer were untrue, and all and singular the law and the premises being by the Court understood and finally considered, and the Court also found that plaintiff was entitled to an interlocutory decree of divorce, and the Court thereupon made and entered herein its interlocutory judgment by which, among other things, it was ordered, adjudged and decreed that plaintiff herein was entitled to a decree of divorce from said defendant, and to have the bonds of

matrimony theretofore existing between the plaintiff and the defendant dissolved.

And more than one year having expired since the date of the entry of said interlocutory judgment, to wit, August 24, 1914, and no appeal having been taken from such judgment or at all, and said judgment being now and at all times since the entry thereof in full force and effect.

Now, therefore, on motion of plaintiff, it is ordered, adjudged and decreed that plaintiff shall have, and is hereby granted a divorce from said defendant, and that the bonds of matrimony between said plaintiff and said defendant are hereby dissolved and the said parties and each of them are hereby restored to the status of single, unmarried person.

It is further ordered, adjudged and decreed that this judgment shall not affect, or be construed to effect, an existing agreement by and between the parties to this action, made and entered into by them on the 1st day of December, 1913, and by consent of the parties hereto the Court hereby reserves the right to hereafter determine all matters in regard to the existing rights of the parties hereto.

Dated: August 25th, 1915.

THOS. F. GRAHAM,
Judge of the Superior Court.

Recorded Book 84, page 231. August 25, 1915.

Filed August 25, 1915. H. I. Mulcrevy, Clerk.

[55]

(Testimony of Edith Huntington Wakefield.)

Mr. SCHLESINGER.—That is the case for the defendant. (Tr. p. 11.)

The COURT.—Who drew this contract?

Mr. SCHLESINGER.—It was drawn, if your Honor please, I presume, by Mr. Shortridge and by Mr. O'Connor, acting together.

The COURT.—And Mr. Shortridge does not appear in the case now, does he?

Mr. SCHLESINGER.—No, he does not. He is away on his senatorial campaign.

The COURT.—But has he ever appeared in this case?

Mr. SCHLESINGER.—Oh, yes. This is the first time that I have appeared in the case, your Honor, to represent Mr. Shortridge.

The COURT.—And did he raise that point in the answer?

Mr. SCHLESINGER. — He simply raised the point by way of a general denial of anything being due under the contract. If your Honor should find that the contract is against public policy you should not enforce it, even in the absence of the point being made, but I take it that it is sufficiently made in the pleadings.

The COURT.—I certainly would not hold it invalid unless I was, under the law, compelled to, because I think that if Mr. Shortridge drew the contract, knowing the law, as he does, he would not intentionally have drawn a contract that was contrary to public policy and against good morals and

(Testimony of Edith Huntington Wakefield.)

then insist upon enforcing that defense as a defense to this action. (Tr. p. 15.)

The COURT.—It seems to be the very fact that there was a nominal amount provided for in the decree is evidence of the fact that both parties had in mind the execution of this contract and the provisions of it, and that they proceeded upon the idea that it was valid, and undoubtedly, to my mind, at that time intended that it should be carried out.

Mr. SCHLESINGER.—Your Honor, that would so appear but the [56] fact is that under the laws of this state, unless there was a certain amount specified in the interlocutory decree, that decree cannot be modified. In other words, if the decree had mentioned no amount at all in favor of Mrs. Spreckels, at no subsequent time could she have had alimony allowed her. I think the purpose of putting in that decree the sum of $10 per month was to permit the parties to come into that tribunal and have it subsequently modified if the circumstances and facts warranted that kind of an application. (Tr. pp. 18, 19.)

Mr. PECK.—Q. Where were you and Mr. Spreckels living at the time of the making of the contract of December 1, 1913?

Mr. SCHLESINGER.—The contract shows that it was made in San Francisco.

Mr. PECK.—Q. I say, where were you living at that time? A. On Washington Street.

(Testimony of Edith Huntington Wakefield.)

Q. Was Mr. Spreckels living with you at that time?

A. No, he was living out on Stanyan Street.

Q. How long before that time had you and Mr. Spreckels lived apart? A. About a year.

Q. You had separated, had you, for about a year before that contract was entered into? A. Yes.

Mr. SCHLESINGER.—That is objected to as immaterial, irrelevant and incompetent, and not within the issues involved here.

The COURT.—The objection is overruled.

Mr. SCHLESINGER.—Exception. (Tr. p. 38.)

On cross-examination the witness testified as follows:

"I did not make any bill of sale to Mr. Spreckels of any portion of the library or furnishings or books. [57]

"I read the complaint in the divorce case in which I appeared as plaintiff and John D. Spreckels, Jr., appeared as defendant, before I signed it.

Q. I will invite your attention to this averment of the complaint appearing at line 32: 'That there is no community property of plaintiff and defendant.' Do you recall that paragraph in the complaint at the time you signed it?

A. I could not recall the time I signed it.

Q. But you had read the complaint at the time you signed it. Was it read over to you by your counsel, Mr. Joseph T. O'Connor? A. Yes, sir.

(Testimony of John D. Spreckels, Jr.)

Q. Was it explained to you by him.

A. I just read it.

Mr. SCHLESINGER. — I will state, if your Honor please, that it is verified by Mrs. Wakefield, then Mrs. Spreckels.

Testimony of John D. Spreckels, Jr., for Defendant.

JOHN D. SPRECKELS, Jr., called as a witness for the defendant, being duly sworn, testified as follows:

I am the defendant in this action.

Q. Mr. Spreckels, there has been some testimony here as to household furniture; that furniture is referred to as furniture in the present home of the parties hereto, situated at No. 1232 Washington Street, in said city and county; was that the family home at the time the contract was signed, 1232 Washington Street?

A. No, the family home was 2099 Pacific Avenue.

The WITNESS. — (Continuing.) At the time the contract was [58] signed Mrs. Wakefield was living at 1232 Washington street, although I lived there with her for a while. The furniture belonged to me, as far as I know. I have not the furniture, and do not know where it is.

Since the divorce Mrs. Wakefield had the custody of the children, but I have always had the actual custody. They have been residing at 2099 Pacific Avenue, and then they have been going to school. I have been paying for their maintenance and support up to the last year, when I have been

(Testimony of John D. Spreckels, Jr.)

away. I have paid to Mrs. Wakefield the amounts of money called for by the interlocutory decree. (Tr. pp. 46, 47.)

On cross-examination, the witness testified as follows:

I don't remember when I made the last payment to Mrs. Spreckels, but I would not deny the allegation in the complaint. I did not pay her anything last month, nor the month before. I do not recollect that I paid her since April 15, 1915. What I meant when I answered counsel a moment ago that I paid her the $10 a month mentioned in the interlocutory decree, if the total amounts paid to her were figured up, I think you would find that in place of paying it regularly every month—if that is the way my answer was to be construed it was wrong. I have not paid the money every month, I might have paid it in bunches of three or four months at a time—I don't know. The agreement called for $350 a month. I have no recollection of the exact amount I paid out. I know I paid out more money than I had to pay out. I think that up to the 15th of April, 1915, I paid more than a sufficient sum of money to make $350 a month from the time the agreement was entered into up to that time. I do not recall any sum paid by me since April 15, 1915. I have no memory of it. [59]

Mrs. Wakefield asked me for permission to take one of the boys to Tahiti with her; I gave her permission to do so. I have no recollection of contributing anything toward his support or mainte-

(Testimony of John D. Spreckels, Jr.)

nance during that time. I do not know how he was maintained. I contributed nothing toward it.

With regard to the other children, I have been away for over a year, and during the time I was absent I know how the children were maintained. I made certain arrangements that my father was to look after the children.

I certainly remember contributing toward the support and maintenance of my children since the contract of December 1, 1913. I paid for the schooling, at Potter's School, first and, I have forgotten the names of the schools; I paid for the tuition. I don't remember the amount I paid for tuition. The cost and maintenance has been well over $100 a month for each child. They were there over a year, I think. The children always have been in my care and custody and I have looked after them and maintained them. I have no recollection as to the exact moneys paid, or the dates. I don't remember whether the children were in the Potter School when this contract was made.

Q. Did you ever make any other contribution for them than the payment of the tuition at that school?

Mr. SCHLESINGER.—Your Honor, may it be understood that I object to this on the ground that it is not proper cross-examination, that there is no issue as to whether or not they were properly maintained, and, therefore, it is not proper cross-examination.

(Testimony of John D. Spreckels, Jr.)

The COURT.—Yes.

Mr. SCHLESINGER.—Exception.

A. Yes.

WITNESS. — (Continuing.) I don't remember when and where and [60] under what circumstances. I said that I had maintained those children and supported them ever since the divorce.

Q. What did you do toward their maintenance last month?

Mr. SCHLESINGER.—I object to that as not being proper cross-examination.

The COURT.—The objection is overruled.

Mr. SCHLESINGER.—Exception.

A. I have had the two boys living with me up to a recent time. I have sent them to a dentist, I bought them clothes. I don't remember whether it was the 25th of last month, or about that time, when they came to me. I think I arrived here about the 25th of June.

Mr. SCHLESINGER.—One moment: I object to that as not proper cross-examination.

The COURT.—The objection is overruled.

WITNESS.—(Continuing.) Prior to that month for about a year I was away. So far as I, myself, know, I don't know whether the funds were taken from moneys I might have had on hand, or whether they were put up by my father, or whether they have been subsequently charged to me, or not. I know that the children have been supported and maintained by either me or by my father. In the last year principally by my father.

(Testimony of John D. Spreckels, Jr.)

Q. Well, take it two years ago: Who maintained and supported them then? Your father?

Mr. SCHLESINGER.—I object to that as not being proper cross-examination.

The COURT.—Objection overruled.

A. I supported them.

Q. In the same way that you supported them during the last year? A. Not the same way. [61]

WITNESS.—(Continuing.) So far as I know the furniture belonged to me. It was purchased after our marriage. I don't remember where the money came from which purchased it.

Mr. SCHLESINGER.—If your Honor please, there is some question about the practice in respect to motions for judgment. In order to preserve our points, I would like now to move for a judgment of nonsuit in favor of the defendant, upon the following grounds:

1. On the general ground of the insufficiency of the evidence.

2. That the contract of December 1, 1913, is wholly void as being against public policy, and it being contingent upon and in aid of obtaining a divorce.

3. Upon the ground that the contract upon which this suit is based is merged into and superseded by the interlocutory decree of divorce, which contains a provision for alimony.

4. That the interlocutory decree in the divorce case is *res adjudicata* as to the question of alimony.

The COURT.—The motion is denied.

Mr. SCHLESINGER.—We will note an exception. (Tr. pp. 66–67.) [62]

The foregoing bill of exceptions contains all the evidence or a statement of the agreed substance of the evidence that was adduced and all the proceedings that were had on the trial of the above-entitled action and is true and correct, and is hereby approved; and,

IT IS FURTHER STIPULATED that said bill of exceptions may be allowed, settled and approved by a Judge outside of the State and District in which said action was tried with the same force and effect as though the same was settled, allowed and approved by a Judge within the aforesaid State and District.

Dated: December 15th, 1921.

C. W. BYRNE, and
JAMES F. PECK,
Attorneys for Plaintiff.

SAMUEL M. SHORTRIDGE,
MORRISON, DUNNE & BROBECK,
BERT SCHLESINGER,
Attorneys for Defendant.

Order Allowing Bill of Exceptions and Making the Same Part of the Records.

The foregoing bill of exceptions having been duly presented to the Court and having been amended to correspond to the facts,

IT IS HEREBY signed, settled, allowed and ap-

proved and made a part of the records in this cause.

Dated: December 30, 1921.

WM. H. SAWTELLE,
Judge.

[Endorsed]: Filed Dec. 23, 1921. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [63]

In the Southern Division of the District Court of the United States in and for the Northern District of California, Second Division.

No. 16,077.

EDITH H. WAKEFIELD,
Plaintiff,

vs.

JOHN D. SPRECKELS, Special Administrator of the Estate of John D. Spreckels, Jr. Deceased,
Defendant.

Petition for Writ of Error.

Now comes John D. Spreckels, special administrator of the estate of John D. Spreckels, Jr., deceased, substituted as defendant in the above-entitled action in lieu of John D. Spreckels, Jr., deceased, and brings this his petition for writ of error to the Southern Division of the District Court of the United States, for the Northern District of California, and in that behalf petitioner shows:

On the 18th day of June, 1921, there was made, rendered and entered in the above-entitled court and cause a judgment in favor of said plaintiff and against John D. Spreckels, Jr., the original defendant in said action, now deceased, for the sum of $11,413.52, and interest at 7% per annum, and;

The Court further ordered, adjudged and decreed that the contract mentioned in paragraph IV of plaintiff's amended complaint was not merged or superseded by the interlocutory or final decree of divorce alleged in defendant's answer, and the said contract is in [64] full force as a subsisting and binding agreement and is not void or invalid or in contravention of public policy.

And your petitioner shows that he is advised by counsel and he avers that there was and is manifest error in the records and proceedings had in said cause, and in the making, rendition and entry of said judgment, to the great injury and damage of your petitioner, all of which errors will be more fully made to appear by an examination of the said record and by an examination of the bill of exceptions to be tendered and filed and in the assignments of errors presented herewith; and to that end thereafter that the said judgment and proceedings may be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit, your petitioner now prays that a writ of error may be issued, directed therefrom to said Southern Division of the District Court of the United States for the Northern District of California, returnable according to law and the practice of the court, and

that there may be directed to be returned pursuant thereto a true copy of the record, Bill of Exceptions, Assignment of Errors, and all proceedings had in said cause, that the same may be removed unto the United States Circuit Court of Appeals for the Ninth Circuit, to the end that the errors, if any have happened may be duly corrected, and full and speedy justice done to your petitioner.

Dated: December 13th, 1921,

SAMUEL M. SHORTRIDGE,
MORRISON, DUNNE & BROBECK,
BERT SCHLESINGER,
Attorneys for Petitioner.

[Endorsed]: Filed Dec. 14, 1921. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [65]

In the Southern Division of the District Court of the United States in and for the Northern District of California, Second Division.

No. 16,077.

EDITH H. WAKEFIELD,
Plaintiff,

vs.

JOHN D. SPRECKELS, Special Admisistrator of the Estate of JOHN D. SPRECKELS, Jr., Deceased,
Defendant.

Assignment of Errors.

John D. Spreckels, special administrator of

the estate of John D. Spreckels, Jr., deceased, and plaintiff in error herein, having petitioned for an order from said court permitting him to procure a writ of error to this court directed from the United States Circuit Court of Appeals for the Ninth Circuit, from the judgment made and entered in said cause in favor of said plaintiff and against John D. Spreckels, Jr., now deceased, now makes and files with said petition the following assignment of errors herein upon which he will rely for a reversal of said judgment upon the said writ, and which errors and each and every of them are to the great detriment, injury and prejudice of the said plaintiff in error; and he says that in the record and proceedings in the above-entitled action, upon the hearing and determination thereof in the Southern Division of the District Court of the United States for the Northern District of California, there is manifest error in this, to wit: [66]

1. The evidence shows that the written agreement made between the plaintiff and John D. Spreckels, Jr., now deceased, dated the first day of December, 1913, and which agreement is mentioned in paragraph IV of plaintiff's amended complaint, was and is void and against public policy, in this: said agreement was made and executed between the parties thereto having for its object the dissolution of the marriage contract between them, or to facilitate that result.

2. The evidence shows the aforesaid agreement was made and entered into between the parties thereto with the purpose and object of bringing

about the dissolution of the marriage contract or facilitating that result.

3. The evidence shows it was the intention of the parties to said written agreement when they made and executed the same to promote a dissolution of the marriage relations existing between them.

4. The evidence shows that the aforesaid written agreement was based upon the promise or understanding between the parties thereto to institute an action to dissolve the marriage relations existing between them, and that such action was instituted and resulted in a decree of divorce being made and entered in favor of the plaintiff and against the said John D. Spreckels, Jr., now deceased.

5. That the written agreement made and entered into between the plaintiff Edith H. Wakefield and John D. Spreckels, Jr., deceased, on the first day of December, 1913, was and is void and against public policy.

6. That said agreement is unlawful and void in this: that it is manifest from said agreement that it was the intention of the parties thereto to promote a dissolution of the marriage [67] relations existing between them.

7. That said agreement was and is unlawful and void in that it is an agreement based upon a promise or understanding to institute an action for the dissolution of the marriage relations between the parties thereto.

8. That said agreement is one calculated or intended to facilitate the securing of a divorce, and

therefore contrary to public policy.

9. That said agreement is void and against public policy in this: that it is an agreement which incites by the hope of financial profit the separation of husband and wife.

10. That the Court erred in finding and adjudging that the plaintiff was entitled to judgment against the said John D. Spreckels, Jr., deceased, in the sum of $11,413.52, or in any other sum of money whatever.

11. The Court erred in making and entering judgment in favor of said plaintiff.

12. That the Court erred in finding and adjudging that the written agreement made between the said plaintiff and John D. Spreckels, Jr., deceased, on the first day of December, 1913, is a valid agreement and not contrary to public policy.

13. That the Court erred in finding and adjudging that the agreement mentioned in paragraph IV of plaintiff's amended complaint was not merged or superseded by the interlocutory or final decree of divorce alleged in defendant's answer, and that the said agreement is in full force as a subsisting and binding agreement and is not void or invalid or in contravention of public policy.

14. That the Court erred in denying defendant's motion [68] for a nonsuit.

Dated: December 14, 1921.

SAMUEL M. SHORTRIDGE,
MORRISON, DUNNE & BROBECK,
BERT SCHLESINGER,
Attorneys for Plaintiff in Error.

[Endorsed]: Filed Dec. 14, 1921. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [69]

In the Southern Division of the District Court of the United States in and for the Northern District of California, Second Division.

No. 16,077.

EDITH H. WAKEFIELD,

Plaintiff,

vs.

JOHN D. SPRECKELS, Special Admisistrator of the Estate of JOHN D. SPRECKELS, Jr., Deceased,

Defendant.

Order Allowing Writ of Error.

The writ of error therein prayed for by John D. Spreckels, special administrator of the estate of John D. Spreckels, Jr., deceased, pending the decision upon the writ of error is hereby allowed; and, the bond for costs upon the writ of error is hereby fixed at the sum of Five Hundred Dollars ($500.00).

Dated: December 14th, 1921.

FRANK H. RUDKIN,

District Judge of the United States for the Northern District of California.

[Endorsed]: Filed Dec. 14, 1921. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [70]

(Title of Court and Cause.)

(Admission of Service of Petition for Writ of Error, etc.)

Receipt is hereby acknowledged this 14th day of December, 1921, of copies of petition for writ of error; order allowing writ of error; assignment of errors and writ of error.

JAMES F. PECK,
CHARLES W. BYRNES,
Attorneys for Plaintiff,

[Endorsed]: Filed Dec. 14, 1921. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [71]

In the Southern Division of the District Court of the United States in and for the Northern District of California, Second Division.

No. 16,077.

EDITH H. WAKEFIELD,
Plaintiff,

vs.

JOHN D. SPRECKELS, Special Admisistrator of the Estate of JOHN D. SPRECKELS, Jr., Deceased,
Defendant.

(Cost Bond.)

KNOW ALL MEN BY THESE PRESENTS: That we, John D. Spreckels, special administrator

of the estate of John D. Spreckels, Jr., deceased, defendant above named, as principal, and W. I. Brobeck and W. H. Hannam, as sureties, are held and firmly bound unto Edith H. Wakefield, the plaintiff in the above-entitled action, in the full and just sum of Five Hundred Dollars ($500.00), to be paid to the said Edith H. Wakefield, her heirs, executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 15th day of December, 1921.

WHEREAS, lately at a District Court of the United States for the Southern Division of the Northern District of California, in a suit pending in said court between the said Edith H. Wakefield, as plaintiff, and John D. Spreckels, Jr., as defendant, a judgment was rendered in favor of the said plaintiff and against [72] the said defendant John D. Spreckels, Jr., and the said John D. Spreckels, Jr., having died since the rendition and entry of said judgment and the father of said decedent John D. Spreckels having been by order of the Superior Court of the State of California, for the City and County of San Francisco, in the matter of the estate of John D. Spreckels, Jr., deceased, duly appointed special administrator of the estate of said John D. Spreckels, Jr., deceased, and having duly qualified as such, and the said District Court having on the 14th day of December, 1921, made its order substituting John D. Spreckels special

administrator of the estate of John D. Spreckels, Jr., deceased, as party defendant in the above-entitled action in lieu of John D. Spreckels, Jr., deceased, and the said John D. Spreckels as such substituted defendant in the action above named having obtained from said District Court a writ of error to reverse the judgment in the aforesaid suit, and a citation directed to the said Edith H. Wakefield citing and admonishing her to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California;

Now, the condition of the above obligation is such, that if the said John D. Spreckels, special administrator of the estate of John D. Spreckels, Jr., deceased, and the substituted defendant in the aforesaid action shall prosecute his writ of error to effect, and answer all damages and costs if he fails to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

JOHN D. SPRECKELS. (Seal)
W. I. BROBECK. (Seal)
W. H. HANNAM. (Seal)

Acknowledged before me the day and year first above written.

[Seal] EUGENE P. JONES.
Notary Public in and for the City and County of San Francisco, State of California. [73]

United States of America,
Northern District of California,
City and County of San Francisco,—ss.

W. I. Brobeck and W. H. Hannam, being duly sworn, each for himself, deposes and says, that he is a freeholder in said District, and is worth the sum of Five Hundred Dollars ($500), exclusive of property exempt from execution, and over and above all debts and liabilities.

W. I. BROBECK.
W. H. HANNAM,

Subscribed and sworn to before me this 15th day of December, 1921.

[Seal] EUGENE P. JONES,
Notary Public in and for the City and County of San Francisco, State of California.

Form and sufficiency of the within bond is hereby approved this 15th day of December, 1921.

C. W. BYRNES,
JAMES F. PECK,
Attorneys for Plaintiff.

[Endorsed]: Filed Dec. 15, 1921. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [74]

In the Southern Division of the District Court of the United States in and for the Northern District of California, Second Division.

No. 16,077.

EDITH H. WAKEFIELD,
Plaintiff and Defendant in Error,

vs.

JOHN D. SPRECKELS, Special Admisistrator of the Estate of JOHN D. SPRECKELS, Jr., Deceased,
Defendant and Plaintiff in Error.

Praecipe for Transcript on Writ of Error.

To the Clerk of Said Court:

Sir: Please prepare certified transcript on writ of error of the following pleadings, papers and orders:

1st. Complaint and summons.
2d. Amended complaint.
3d. Demurrer to amended complaint.
4th. Order overruling demurrer to amended complaint.
5th. Stipulation extending time of defendant John D. Spreckels, Jr., now deceased, in which to answer amended complaint.
6th. Answer to amended complaint.
7th. Stipulation waiving trial by jury.
8th. Findings of fact and conclusions of law.
9th. Judgment.

10th. Order dated December 14, 1921, substituting party defendant.

11th. Admission of service of order dated December 14, 1921, substituting party defendant. [75]

12th. Bill of exceptions as settled by trial Judge.

13th. Petition for writ of error.

14th. Order allowing writ of error.

15th. Assignment of errors.

16th. Bond for costs.

17th. Writ of error.

18th. Citation on writ of error.

19th. Praecipe for certified transcript.

Dated December 31, 1921.

SAMUEL M. SHORTRIDGE,
MORRISON, DUNNE & BROBECK,
BERT SCHLESINGER,

Attorneys for John D. Spreckels, Special Administrator of the Estate of John D. Spreckels, Jr., Deceased, Defendant and Plaintiff in Error.

[Endorsed]: Filed Jan. 3, 1922. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [76]

In the Southern Division of the United States District Court, in and for the Northern District of California, Second Division.

No. 16,077.

EDITH H. WAKEFIELD,

Plaintiff,

vs.

JOHN D. SPRECKELS, Special Administrator of the Estate of JOHN D. SPRECKELS, Jr.,

Defendant.

Certificate of Clerk U. S. District Court to Transcript of Record.

I, Walter B. Maling, Clerk of the District Court of the United States for the Northern District of California, do hereby certify the foregoing seventy-six (76) pages, numbered from 1 to 76, inclusive, to be a full, true and correct copy of the record and proceedings as enumerated in the praecipe for record on writ of error, in the above-entitled cause, as the same remains of record and on file in the office of the Clerk of said Court, and that the same constitute the return to the annexed writ of error.

I further certify that the cost of the foregoing return to writ of error is $34.85; that said amount was paid by the defendant, and that the original writ of error and citation issued in said cause are hereto annexed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 26th day of January, A. D. 1922.

[Seal] WALTER B. MALING,
Clerk of the United States District Court, Northern District of California.

By J. A. Schaertzer,
Deputy Clerk. [77]

In the Southern Division of the District Court of the United States in and for the Northern District of California, Second Division.

No. 16,077.

EDITH H. WAKEFIELD,
Plaintiff and Defendant in Error,

vs.

JOHN D. SPRECKELS, Special Administrator of the Estate of JOHN D. SPRECKELS, Jr., Deceased,
Defendant and Plaintiff in Error.

Writ of Error.

United States of America,—ss.

The President of the United States of America, to the Honorable, the Judges of the District Court of the United States for the Northern District of California, GREETING:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you,

between John D. Spreckels, special administrator of the estate of John D. Spreckels, Jr., deceased. plaintiff in error, and Edith H. Wakefield, defendant in error, a manifest error hath happened, to the great damage of the said plaintiff in error, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court [78] of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable WM. HOWARD TAFT, Chief Justice of the United States, the 14th day of December, in the year of our Lord one thousand nine hundred and twenty-one.

[Seal] WALTER B. MALING,
Clerk of the United States District Court, Northern District of California.

J. A. Schaertzer,
Deputy Clerk.

Allowed by:

FRANK H. RUDKIN,
Judge.

Dated December 14th, 1921. [79]

[Endorsed]: No. 16,077. Southern Division District Court of the United States, Northern District of California, Second Division. Edith H. Wakefield, Plaintiff, and Defendant in Error, vs. John D. Spreckels, Special Administrator of the Estate of John D. Spreckels, Jr., Deceased, Defendant, and Plaintiff in Error. Writ of Error. Filed Dec. 14, 1921. W. B. Maling, Clerk. J. A. Schaertzer, Deputy Clerk.

Receipt of a copy of the within writ of error is admitted this 14th day of December, 1921.

_____,

_____,

Attorneys for Plaintiff and Defendant in Error.

Return to Writ of Error.

The answer of the Judge of the District Court of the United States, in and for the Northern District of California, Second Division.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said court, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned, at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the Court.

[Seal] WALTER B. MALING,

Clerk United States District Court for the Northern District of California.

By J. A. Schaertzer,
Deputy Clerk. [80]

In the Southern Division of the District Court of the United States in and for the Northern District of California, Second Division.

No. 16,077.

EDITH H. WAKEFIELD,

Plaintiff,

vs.

JOHN D. SPRECKELS, Special Administrator of the Estate of JOHN D. SPRECKELS, Jr., Deceased,

Defendant.

Citation on Writ of Error.

United States of America,
Northern District of California,—ss.

To Edith H. Wakefield, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the Clerk's office at the United States District Court for the

Northern District of California, wherein John D. Spreckels, special administrator of the estate of John D. Spreckels, Jr., deceased, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the party in that behalf. [81]

WITNESS, the Honorable WM. C. VAN FLEET, Judge of the United States District Court, for the Northern District of California, this 14th day of December, 1921.

FRANK H. RUDKIN,
United States District Judge. [82]

[Endorsed]: No. 16,077. Southern Division of the District Court of the United States, Northern District of California, Second Division. Edith H. Wakefield, Plaintiff, vs. John D. Spreckels, Special Administrator of the Estate of John D. Spreckels, Jr., Deceased, Defendant. Citation on Writ of Error. Filed Dec. 14, 1921. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

Receipt of a copy of the within citation on writ of error is admitted this 14th day of December, 1921.

JAMES F. PECK,
CHARLES W. BYRNES,
Attorneys for Plaintiff

[Endorsed]: No. 3832. United States Circuit Court of Appeals for the Ninth Circuit. John D. Spreckels as Special Administrator of the Estate of John D. Spreckels, Jr., Deceased, Plaintiff in Error, vs. Edith H. Wakefield, Defendant in Error. Transcript of Record. Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, Second Division.

Filed Jan. 26, 1922.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

In the District Court of the United States for the Southern Division of the Northern District of California, Second Division.

No. 16,077.

EDITH H. WAKEFIELD,

Plaintiff,

vs.

JOHN D. SPRECKELS,

Defendant.

Order Enlarging Return Day of Writ of Error and Citation.

IT IS ORDERED that the return day of the writ of error and return day of the citation issued in the above-entitled cause be enlarged, and the same is

hereby enlarged, thirty (30) days from and after the date hereof in order to permit the clerk of the above-named court to complete certified copy of transcript on the writ of error herein, to be transmitted by him to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated January 7, 1922.

W. H. HUNT,
United States Circuit Judge.

[Endorsed]: No. 16,077. District Court of the United States for the Southern Division of the Northern District of California, Second Division. Edith H. Wakefield, Plaintiff, vs. John D. Spreckels, Jr., Defendant. Order Enlarging Return Day of Writ of Error and Citation.

No. 3832. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 7, 1922. F. D. Monckton, Clerk. Re-filed Jan. 26, 1922. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.